

# How to Cut Up the Pie: Subrogation Under the WC Act



David F. Stern, Esquire  
Stern & Cohen

Adrienne Breslin, Esq.  
Clear Spring Property and  
Casualty Group

Daniel Hessel, Esq.  
Golkow Hessel, LLC



The carrier's "absolute" right to first dollar  
recovery ... *in theory*

## **77 P.S. § 671 (abridged)**

### **Subrogation of employer to rights of employee against third persons.**

Where the compensable injury is caused in whole or in part by the act or omission of a third party, the employer shall be subrogated to the right of the employee ... against such third party to the extent of the compensation payable under this article by the employer.

The employer shall pay that proportion of the attorney's fees and other proper disbursements that the amount of compensation paid or payable at the time of recovery or settlement bears to the total recovery or settlement.

Any recovery against such third person in excess of the compensation theretofore paid by the employer shall be paid forthwith to the employee ... and shall be treated as an advance payment by the employer on account of any future instalments of compensation.

# LIBC – 380 Worksheet



EMPLOYEE SOCIAL SECURITY NUMBER  
 -

**EMPLOYEE**

First name \_\_\_\_\_  
 Last name \_\_\_\_\_  
 Date of birth \_\_\_\_\_  
 If deceased - Dependent \_\_\_\_\_  
 First name \_\_\_\_\_  
 Last name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Address \_\_\_\_\_  
 City/Town \_\_\_\_\_  
 County \_\_\_\_\_

**NOTICE:** Agreements (typed) and provisions must be set forth in writing.

**EMPLOYEE'S ATTORNEY**

Name \_\_\_\_\_  
 Firm name \_\_\_\_\_  
 Address \_\_\_\_\_  
 Address \_\_\_\_\_  
 City/Town \_\_\_\_\_  
 Telephone \_\_\_\_\_  
 PA Attorney ID number \_\_\_\_\_

**CALCULATION INSTRUCTIONS**

**BASIC RECOVERY INFORMATION** — Complete this section for all third-party settlements.

- |   |          |                 |
|---|----------|-----------------|
| 1. Total amount of third-party recovery | 1. _____ |                 |
| 2. Accrued workers' compensation lien   | 2. _____ |                 |
| a. indemnity benefits                   |          |                 |
| b. medical benefits                     |          |                 |
| 3. Expenses of recovery                 | 3. _____ |                 |
| 4. Balance of recovery                  | 4. _____ | = #1 (minus) #2 |

**PRESENT DISTRIBUTION OF PROCEEDS** — Complete this section to calculate the amount of proceeds the employer is to receive as of \_\_\_\_\_ (date through which accrued workers compensation lien [#2] calculated).

- |  |            |                            |
|--|------------|----------------------------|
| 5. Accrued lien expense reimbursement rate | 5. _____ % | = #2 (divided by) #1 x 100 |
| 6. Expenses attributable to accrued lien   | 6. _____   | = #3 (times) #5            |
| 7. Net lien (amount employer to receive)   | 7. _____   | = #2 (minus) #6            |

**FUTURE DISTRIBUTION OF PROCEEDS** — Complete this section to calculate how much the employer must reimburse the employee for expenses used to acquire the third party recovery on future compensation liability. **Note: This section is to be completed only if the total amount of the third-party recovery (#1) is greater than the amount of the accrued workers' compensation lien (#2).**

- |  |            |                            |
|--|------------|----------------------------|
| 8. Reimbursement rate on future compensation liability   | 8. _____ % | = #3 (divided by) #1 x 100 |
| 9. The employer/insurer is responsible for _____ percent (#8) of any future weekly benefits to satisfy its obligation to reimburse its pro rata share of employee's fees and expenses until the subrogation interest is exhausted _____ (#4). Thereafter, the employer/insurer is responsible for 100 percent of any compensation liability. |            |                            |

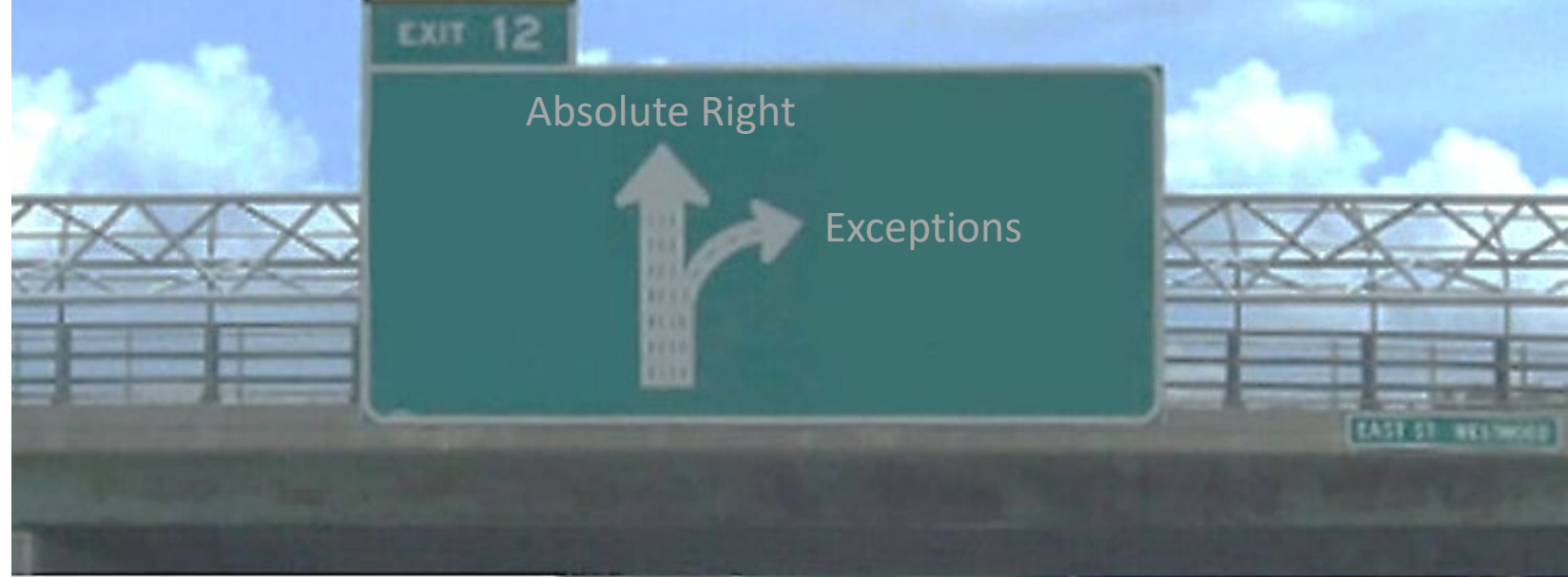
**Further Matters Agreed Upon:**





# Exceptions to the “absolute” right of subrogation:

- Loss of Consortium
- Wrongful Death
- Contractual Waiver
- Tort Claims Act
- No Direct Action
- Voluntary Reduction



When and how to  
negotiate the lien...

